IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7209 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TALUKA DEVELOPMENT OFFICER - Petitioner(s)

Versus

RAIJIBHAI HIMMATBHAI PARMAR - Respondent(s)

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Appearance :

NOTICE SERVED for Petitioner(s) : 1,MR SUNIL S JOSHI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 12/01/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.Sunil S. Joshi, on behalf of petitioner. Though notice of rule has been

served to respondent but, no appearance is filed on his behalf by any Advocate. The respondent is also not personally remained present when matter has been taken up for hearing. However, considering the fact that respondent - workman is already retired from service on 30th June,2002. Therefore, the matter has been taken up for hearing in absence of respondent.

2. The respondent was appointed on 17th January,1974 on monthly salary of Rs.100/- and thereafter, his salary was fixed at Rs.125/- per month w.e.f. 1st October,1979 and thereafter, w.e.f. 1st July,1983, his salary was fixed at Rs.187.50 paise per month. The service of respondent was terminated on 15th June,1986 because of unsatisfactory work. Notices were served before terminating service of respondent by petitioner. The termination order was challenged by petitioner before Labour Court in Reference No.101 of 1990 (Old Reference No.703 of 1986) before Labour Court, Godhara. Initially, Labour Court, Godhara has passed an award on 26th February,1991 in absence of petitioner and granted reinstatement with continuity of service and with full back-wages of interim period. Against said award, Special Civil Application No.9251 of 1995 filed by petitioner which was dismissed.

Against that, Letters Patent Appeal No.867 of 1997 was preferred by petitioner. The Division Bench of this Court has passed an order on 8th July,1999 wherein appeal is partly allowed with following directions:

"1) The appellant will reinstate the respondent workman as early as possible but not later than 1.8.1999.

2) The appellant will pay an amount of Rs.2500/- (Rupees two thousand five hundred only) towards the costs to the respondent.

3) The appellant will pay an amount of Rs.15,000/- (Rupees fifteen thousand only) towards past payment of wages to the workman on or before 1.8.1999.

4) The amount ordered to be paid, will be subject to the final result of the reference.

5) Since the matter is very old the Labour Court will decide the Reference as early as possible preferably within six months from the receipt of the writ.

6) If payment of costs of Rs.2500/- and part payment of wages of Rs.15,000/- is not made within the stipulated period or the respondent is not reinstated as per our order, this order will not operate."

2.1 According to direction given by Division Bench of this Court, petitioner has to reinstate the respondent – workman as early as possible but, not later than 1st August,1999. The cost of Rs.2500/- to be paid by petitioner to workman and for past payment of wages, Rs.15,000/- are to be paid by petitioner to the workman on or before 1st August,1999. The said amount is to be paid subject to final out come of reference. Thereafter, Division Bench has directed to Labour Court to decide the reference as early as possible within 6 months from the date of receipt of the writ.

3. Thereafter, Labour Court, Godhara has decided reference No.25 of 2000 (Old Reference No.101 of 1990) on 31st March,2000. The Labour Court, Godhara has granted reinstatement with 25% back-wages from the date of termination till date of reinstatement. Against this, present petition is filed by the petitioner.

4. Learned Advocate, Mr.Joshi, has raised contention before this Court that letter dated 5th June,1986 written by respondent workman to Taluka Development Officer, Halol wherein he admits the charge and, therefore, there is no need to hold departmental inquiry. He also submitted that said letter was produced on record by petitioner vide Exh.26 but, Labour Court has not considered the same. Therefore, according to him, petitioner has followed proper procedure and terminate service of respondent. The Labour Court has committed gross error in granting reinstatement in service with 25% back-wages of interim period. Except that, no other contention is raised by learned Advocate, Mr.Joshi.

5. I have perused the award and record of petition. The respondent workman has filed statement of claim vide Exh.3 and reply was submitted by petitioner vide Exh.8/1 The workman was appointed on monthly salary in the post of permanent watchman w.e.f. 27th August,1973 and his service was terminated on 16th April,1986. Before terminating service, on 10th March,1986, show cause notice was served to respondent and respondent has replied said show cause notice. Thereafter, termination

order was passed. It is undisputed between the parties that before passing termination order on the basis of show cause notice dated 10th March,1986, no departmental inquiry was initiated against respondent. No charge levelled against workman in show cause notice or proved by petitioner in departmental inquiry. According to petitioner, initially respondent was appointed on 17th January,1974 in salary of Rs.100/- per month. Thereafter, he was remained continue in service up to date of termination on 16th April,1986. During service of respondent, one incident occurred on 3rd March,1986, wherein, one jeep which was lying in compound of petitioner Establishment wherein spare wheel and other related articles of jeep have been stolen by somebody which was worth Rs.4000/-. Therefore, allegations made against respondent that he was remained negligent while performing duties as watchman and that is how, the incident occurred due to his negligence and carelessness. It was also admitted by petitioner in written statement vide Exh.8 that there was no show cause notice served to respondent in respect of theft which was occurred on 3rd March,1986.

6. The Labour Court has examined the merits of case

and also documents which were produced by respective parties. Ultimately, Labour Court has come to conclusion that respondent had remained in service for more than 13 years and during which, no misconduct has been committed by him. He was performing the duties from 6.00 a.m. to 8.00 a.m. of next day as a watchman. The show cause notice dated 10th March,1986 was served to respondent and respondent had replied that it was not his duty to watch and take care of vehicles which was lying in the compound. Ultimately, after receiving reply from respondent, petitioner has terminated service on 10th April,1986. Labour Court has considered letter dated 5th June,1986 which has been relied by Mr.Joshi wherein, according to him, some admission has been made by respondent but, this letter is subsequent to the termination. Therefore, there is no relevancy, if at all it is considered to be an admission of fact by respondent. The submission of learned Advocate, Mr.Joshi, about admission of respondent in letter dated 5th June,1986 has no relevancy against the facts that it is subsequent to terminating the service. So, alleged admission of respondent in letter dated 5th June,1986 is totally irrelevant for the contention of not holding departmental inquiry before terminating service of

respondent. On behalf of petitioner, one witness Kanaiyalal Shah was examined. The Labour Court has also considered that in termination order, the petitioner has not considered the reply which was submitted by respondent. The Labour Court has also considered that jeep was not lying in the compound but, it was near to residence of TDO. It was a negligence of driver of the jeep to left the jeep without any information to respondent. The respondent was not having any necessary equipments for performing the duties of the watchman. The petitioner has not given any details or reasonings on what basis the allegations are made against respondent has been found to be proved. However, not to consider the reply submitted by the respondent, the Labour Court has thought it fit that order of termination is bad. Apart from that Labour Court has further considered the question of punishment under Section 11-A of the I.D.Act,1947. Labour Court has also considered 13 years service and unblemished past record. As no documents have been produced by petitioner before the Labour Court about past record, the Labour Court has come to conclusion that looking to allegations made against respondent and not to consider the reply submitted by respondent, the punishment which has been imposed by

petitioner is harsh and unjustified. Therefore, Labour Court has exercised discretionary power under Section 11-A of the I.D.Act and granted reinstatement with continuity of service and with 25% back0wages of interim period.

7. I have considered the observations and reasonings given by Labour Court. According to my opinion, when show cause notice for allegation has been served to respondent and when reply has been filed by respondent wherein allegations are not admitted by him, then, it is a burden upon employer to prove the misconduct against respondent. No such fair procedure has been followed by petitioner before terminating service of the respondent. It amounts to violating principles of natural justice. It is a duty of public body to act fairly with respondent when allegations made against respondent about misconduct. Therefore, Labour Court has rightly exercised powers under Section 11-A of the I.D.Act,1947 with a conclusion that petitioner has not applied the mind in respect to reply of respondent before terminating service. In view of these facts, there is no error committed by Labour Court which found apparently on face of record. Learned Advocate, Mr.Joshi, is not able

to point out any error from the record. The submission of Mr.Joshi based on letter dated 5th June,1986 wherein, admission was made by respondent is become irrelevant because said letter is subsequent to termination. So, such admission may not be taken into account in reference proceedings. The Labour Court has also considered not to grant full back-wages in favour of respondent workman because this Court has granted reinstatement during pendency of reference to the respondent. Therefore, reasonable and equitable order has been passed by Labour Court which does not require any interference by this Court while exercising the powers under Article 227 of the Constitution of India.

8. The respondent workman has retired from service on 30th June,2002. The letter dated 29th June,2002 placed on record by petitioner which was written by TDO, Halol, District – Panchmahals. Therefore, considering this subsequent fact and direction issued by Division Bench of this Court that amount of Rs.15,000/- towards past payment of wages which was paid to workman on or before 1st August,1999 to be adjusted at the time of making 25% back-wages of interim period as directed by Labour Court. Subject to above clarification, there is no

substance in the present petition. Therefore, present petition is dismissed with no order as to costs. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

(vipul)